

## Department of Health and Human Services

## § 13.10

the demand. An award shall not include fees and expenses that are primarily related to defending against the merits of charges, or fees and expenses that are primarily related to defending against the portion of the demand that was not excessive, to the extent that these fees and expenses are distinguishable from the fees and expenses primarily related to defending against the excessive nature of the demand.

(3) Awards will be denied if the party has committed a willful violation of law or otherwise acted in bad faith, or if special circumstances make an award unjust.

[48 FR 45252, Oct. 4, 1983, as amended at 69 FR 2846, Jan. 21, 2004]

### § 13.6 Allowable fees and expenses.

(a) Awards will be limited to the rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses. If a party has already received, or is eligible to receive, reimbursement for any expenses under another statutory provision or another program allowing reimbursement, its award under these rules must be reduced by the amount the prevailing party has already received, or is eligible to receive, from the Federal government.

(b) An award for the fees of an attorney or agent may not exceed \$125.00 per hour, regardless of the actual rate charged by the attorney or agent. An award for the fees of an expert witness may not exceed the highest rate at which the Department pays expert witnesses, which is \$24.09 per hour, regardless of the actual rates charged by the witness. These limits apply only to fees; an award may include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges separately for such expenses.

(c) In determining the reasonableness of the fees sought for attorneys, agents or expert witnesses, the adjudicative officer must consider factors bearing on the request, which include, but are not limited to:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for like services; if the attorney, agent or witness is an em-

ployee of the applicant, the fully allocated cost of service;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

[48 FR 45252, Oct. 4, 1983, as amended at 69 FR 2846, Jan. 21, 2004]

### § 13.7 Studies, exhibits, analyses, engineering reports, tests and projects.

The reasonable cost (or the reasonable portion of the cost) for any study, exhibit, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded to the extent that:

(a) The charge for the service does not exceed the prevailing rate payable for similar services,

(b) The study or other matter was necessary to the preparation for the administrative proceeding, and

(c) The study or other matter was prepared for use in connection with the administrative proceeding. No award will be made for a study or other matter which was necessary to satisfy statutory or regulatory requirements, or which would ordinarily be conducted as part of the party's business irrespective of the administrative proceeding.

## Subpart B—Information Required from Applicants

### § 13.10 Contents of application.

(a) Applications for an award of fees and expenses must include:

(1) The name of the applicant and the identification of the proceeding;

(2) Where an award is sought on the basis stated in § 13.5(b) of this part, a declaration that the applicant believes it has prevailed, and an identification of the position of the Department that the applicant alleges was not substantially justified. Where an award is sought on the basis stated in § 13.5(c) of this part, an identification of the statutory or regulatory requirement that the applicant alleges the Department